IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2296 OF 2006

Hukumchand Hiralal Bhalani ....Petitioner

Versus

The State Excise Minsiter & Ors ....Respondents

Mr.S.G.Kudle for the petitioner nos.5-10.

Deepa Pohuja i/by. V.B.Thadhani for respondent nos.4 to 6.

Mr.Dilip Bodake, Adv. for respondent no.7-12(y)

R.M.Patne for respondent nos.1 to 3.

CORAM: S.C.DHARMADHIKARI, J.

21.11.2007

P.C. :

1. This petition is directed against an order passed by the Minister of State Excise dated 24.11.2005. It is brought to my notice that Respondent no.7 to this

petition Narendra Krishanalal Vora had also challenged the same order by filing Writ Petition No. 415 of 2006 and the same was placed before this court on 15.2.2006. That petition has been disposed off by the following directions :-

> "5. After hearing Shri Sawant in support of this petition and Ms.Thadani for respondents and perusing the annexures to the petition so also the affidavit in reply, to my mind, interest of justice will be served if an opportunity is given to the petitioner to approach the competent Civil Court and assert his right, title and interest in the estate of deceased which includes a shop premises in question and based upon the will and other documents, claim appropriate reliefs. In such a suit, if instituted, it would be open for the petitioner to apply for appropriate interim orders. The order of the Minister which is under challenge in this petition would operate subject to petitioner adopting appropriate proceedings. This course of action would not prejudice respondent no.6. This order is passed after perusing further affidavit dated 16th February, 2006. Even if the order under challenge is acted upon, none dispute that the remedy of the petitioner is to move the Civil Court."

2. It is not disputed before me that the present petitioner was also a party to the proceedings before the Minister. The parties are raising rival claims on the basis of the will of the deceased MahendraKumar Bhalani.

3. While it is true that the Minister has interfered in the revisional jurisdiction with the concurrent orders, yet, this is an arrangement which is subject to the parties establishing their claims before the competent civil court. I have clarified in my order that the Minister's directions can never be conclusive, in as much as, the rights which are claimed by the parties have to be ascertained and adjudicated upon by the competent court.

4. Once the competent court issues appropriate directions even at interim stage, the authorities under the prohibition Act must give effect to them. Therefore, it is not necessary in my opinion to go into the rival contentions and take a different view. The same order was the subject matter of challenge in the earlier petition. In these circumstances, the order passed in Writ Petition No.415 of 2006 dated 15.2.2006 would also operate in so far as the present petition is concerned and this petition also stands disposed off on the same terms. No costs.

(S.C.Dharmadhikari, J)